

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:16-cv-0220-KJD-NJK

Plaintiff,

ORDER

V.

RICHARD C. SHAW, *et. al.*

Defendants.

13 Presently before the Court is Plaintiff's Motion for Summary Judgment (#65). Defendant
14 filed a response in opposition (#70) to which the United States replied (#72). Also before the
15 Court is Defendant Rose Shaw's Motion for Partial Judgment on the Pleadings (#68). Plaintiff
16 filed a response in opposition (#69) to which Defendant Rose replied (#71).

I. Facts

18 Defendant Richard Shaw (hereinafter “Shaw”) failed to prepare and file timely income
19 tax returns for the 1999, 2000, 2003, and 2004 tax years. For the 1999, 2000, and 2003 tax
20 years, taxes were assessed based on information collected by the IRS from third parties, such as
21 information put forward on Form 1099-MISCs that report money paid to individuals by
22 companies for contracting work, among other possible sources. For the 2004 tax year, the taxes
23 were initially assessed by examination, and Shaw then filed a return showing that amount of
24 taxes as being properly owed for that year.

25 In 2008, returns for the 2000, 2002, and 2003 tax years were filed with the IRS on
26 Richard Shaw's behalf, with zeroes entered in the lines for various forms of income. With those
27 documents were filed purportedly "corrected" Form 1099-MISCs, also reporting Richard Shaw
28 as having received zero income from each recipient that year. Regardless of who completed the

1 returns, eventually Richard Shaw signed off on them. Richard Shaw and his wife, Rose Shaw
2 (hereinafter “Rose”), admit that during those years Richard Shaw actually received money for
3 the services he provided, contrary to the numbers reported on their “zero” returns and the
4 “corrected” Form 1099-MISCs. The basis for Richard Shaw reporting zero income on their
5 returns were the ideas in the book Cracking the Code, by Pete Hendrickson, effectively stating
6 that income from services is not taxable. This argument has repeatedly been found by courts to
7 be frivolous.

8 In 2016, Richard Shaw filed new returns for a number of tax years, including the
9 years at issue here (1999, 2000, 2002, 2003, and 2004). In those documents, he reported numbers
10 higher than zero, but lower than the amounts assessed. During his deposition, he testified that the
11 basis for those numbers may have been “guesstimates,” but that Rose helped him fill the
12 documents out. Rose Shaw testified that some of the numbers may have been guesstimates, but
13 some of them may have been based on receipts or other documents. The United States did submit
14 written discovery requesting receipts or other corroborating information, but never received any
15 such documents with Defendants’ discovery responses. With interest calculated to October 31,
16 2017, the amount owed on the taxes, penalties, and interest for the years and periods at issue is:
17 \$172,809.47 for the 1999 tax year; \$160,852.93 for the 2000 tax year; \$28,349.50 for the 2003
18 tax year; \$23,931.39 for the 2004 tax year; \$6,390.97 for the 2003 civil penalty period; and
19 \$6,391.65 for the 2002 civil penalty period. The total, for all those periods, is \$398,725.91.

20 Richard and Rose Shaw originally purchased the Nevada property in 1992. They took out
21 a mortgage to purchase the property, and used their money to make the deposit and make
22 payments on the mortgage. Richard and Rose Shaw purchased the Florida property in 1999, and
23 similarly made mortgage payments on the property after the purchase.

24 In 2004, Saint Andrews Ivy, B.T. (“Saint Andrews Ivy”), was formed as a business trust.
25 Saint Andrews Ivy’s address is at the Nevada Property where Richard and Rose Shaw currently
26 live. According to Richard Shaw, the trust was actually created “as a family preservation type
27 trust,” and Richard and Rose “put the properties in there so the kids would be able to use these
28 properties forever if Rose and I left the world, and they would have use without inheritance taxes

1 and all that.” As Saint Andrews Ivy’s 30(b)(6) designee, Vanessa Shaw (Richard and Rose’s
2 daughter), said at its deposition, the purpose of the trust was to “protect our assets,” and “to bring
3 it down to our family generations for our kids from probate or if they die and it gets stuck with
4 the state.” The role of the trustee, according to Saint Andrews Ivy, was “to protect the trust from
5 any third party or governmental agencies.”

6 The trust documents list Vanessa Shaw, as the first trustee, and Travis Shaw (Richard and
7 Rose’s son), as her only co-trustee, while Rose Shaw was the trust’s secretary and Richard Shaw
8 was the trust’s managing director. Vanessa Shaw was also Saint Andrews Ivy’s 30(b)(6)
9 designee at its deposition. However, the “certificate of trust” filed with the Nevada Secretary of
10 State to formally create the business trust lists Richard Shaw and Rose Shaw as the only trustees
11 (with their signatures) and Travis Shaw as their registered agent. Similarly, the “initial list of
12 trustees” filed with the Nevada Secretary of State lists Richard Shaw and Rose Shaw as the only
13 trustees.

14 At the creation of the trust, Richard Shaw was “trust exchanger” which, according to
15 Richard Shaw, meant that he was the person who put property into the trust at formation. Richard
16 Shaw explained that the purpose of the exchanger was “to exchange the property for trust
17 certificates.” At the time of formation, no money went into the trust, just the three pieces of real
18 property and all the furniture in the real property (including tools, electronics, and a baby grand
19 piano).¹ The non-real property transferred to Saint Andrews Ivy consisted of all the items and
20 furniture on the real property at the time of transfer. There was never a formal purchase-and-sale
21 agreement where the trust purchased the property, and the Shaws never received any money
22 from the transfer of the properties to Saint Andrews Ivy. However, after the transfer, the Shaws
23 did have the use of the real property, as well as the use of all the personal property transferred to
24 the trust.

25

26 ¹ In addition to the Nevada property, with which this case is concerned, and the Florida property, which the
27 United States has obtained a default judgment stating that Saint Andrews Ivy holds as nominee or alter ego as Richard
28 Shaw, the Shaws also transferred a small piece of property in Arizona to Saint Andrews Ivy, B.T. That piece of
property is not at issue in this case.

1 After transferring the property to the trust, Richard Shaw “did not have any other assets
2 other than some tools.” Rose Shaw stated that, after the transfers of property to the trust, she did
3 not own any substantial property. Richard Shaw testified that there were no beneficiaries of the
4 trust “other than the children,” but he “d[id]n’t know if you call them[, the children,] a
5 beneficiary.” As Richard explained it, the only role of Richard and Rose Shaw’s children
6 (Vanessa and Travis) in the trust was as trustees. Rose Shaw testified that there were no trustees
7 apart from Richard Shaw and Rose Shaw (early on), and Vanessa Shaw and Travis Shaw.

8 While the trust never paid Richard or Rose Shaw any money for the properties transferred
9 to it (including the Nevada property at issue in this case), Richard and Rose did originally
10 receive “trust certificate units” (“TCUs”) from the trust. According to Rose Shaw, TCUs were a
11 form of ownership of the trust, TCUs were basically the right “[t]o hold the property, the assets,
12 to hold the assets until their contract is done.” Thus, if the trust was liquidated, then the holders
13 of the TCUs would get proportionate shares of the trust’s assets. According to the trust
14 documents TCUs represent 100% of the rights to distribution from the organization’s trust estate,
15 whoever holds the TCUs is “entitled to a proportionate share of all distributions declared or
16 made in the ordinary course of business.” The trust documents also explain that the purpose of
17 the trust itself was to hold and manage property “for the benefit of certificate holders.”

18 The trust issued 20 TCUs to Richard and Rose for the Nevada Property, 20 TCUs to them
19 for the Florida property, and 10 TCUs for the Arizona property, but ultimately 60 TCUs were
20 issued to Richard and Rose Shaw, total (and no others were issued). However, Richard and Rose
21 then transferred those TCUs back to Saint Andrews Ivy, without receiving any compensation
22 whatsoever. Thus, according to the Trust’s own documents, Saint Andrew’s Ivy, is the sole
23 owner of its own TCUs, meaning it is the only person or entity with the rights to distribution of
24 its assets if it is dissolved.

25 Despite being formed as a business trust, Saint Andrews Ivy never conducted any
26 business. Saint Andrews Ivy never made any profit, and its only purpose was to manage the three
27 properties transferred to it at formation. Saint Andrews Ivy did not keep any books or records,
28 had no bank account, kept no quarterly reports, filed no tax returns and no income passed

1 through the trust to the trustees. There were no electronic records, either, and Saint Andrews Ivy
2 did not have a bank account in its own name. While the trust statement explained that the trustees
3 and officers “shall be independent contractors and shall execute a written contract with the
4 company,” the trustees and officers never executed such an agreement.

5 Since the Nevada and Florida properties were transferred to Saint Andrews Ivy, Richard
6 and Rose Shaw have lived in those two properties (and, with one possible exception—Rose
7 Shaw’s suggestion that they might have rented another property in Fort Myers “temporarily”—
8 only those two properties) rent-free. When the properties were renovated, the renovations and
9 painting were primarily done by Richard Shaw (the only exception being a re-roofing), who also
10 supplied the paint and the “normal stuff” for those renovations. The new roof was paid for with
11 an insurance payout. The only people to live in the Nevada property after the “transfer” to Saint
12 Andrews Ivy were Richard Shaw, Rose Shaw, and possibly members of their family (at some
13 point, Travis and his then-wife lived there). Similarly, Richard and Rose Shaw were the primary
14 residents of the Florida property after the transfer, with a neighbor casually living there for three
15 months at one point. While the neighbor did apparently pay rent, that rent was never reported as
16 taxable income by anyone: not by the Shaws, and not by Saint Andrews Ivy or its trustees.

17 The utilities and loans related to the Nevada property (and the Florida property) are
18 currently paid out of an account in the name of Cannen, LLC. Richard and Rose Shaw are the
19 only signatories on that account, and are the only people who make decisions on whether to
20 make a payment out of that account. The money in that account comes from Richard Shaw’s
21 inheritance. Saint Andrews Ivy does not, itself, provide any money to make payments on the
22 loans. They use that account to pay not only the expenses related to the Nevada and Florida
23 properties, but also their personal expenses. Rose Shaw did state that she only paid the property
24 expenses out of that account on the basis of a directive from the Saint Andrews Ivy trustee telling
25 them to make those payments. But Richard and Rose make the decisions to make payments for
26 personal expenses. Cannen, LLC is a Nevada entity with Richard Shaw, Rose Shaw, and
27 Vanessa Shaw listed as its only managers or managing members.

28

1 Previously, payments related to the property were made out of a bank account in the
2 name of R&R Adjusters, LLC, an entity created in 2004 with Richard and Rose Shaw listed as
3 the only managers or managing members. The “R&R” in “R&R Adjusters” stands for “Ric and
4 Rose.” Rose believed the source of the funds for that account were “something we [the Shaws]
5 had earned from something.” Richard, Rose, and Travis were all signatories on the account,
6 and each of them had the power to make decisions regarding what was paid.

7 On or around March 17, 2014, Rose Shaw filed a “Certificate of Cancellation for a
8 Nevada Business Trust,” on behalf of Saint Andrews Ivy, as Saint Andrews Ivy’s trustee. The
9 basis for the cancellation was that “it has been determined due to the lack of business
10 transactions or the anticipation of the same, this trust is cancelled.” Richard Shaw stated that that
11 document cancelling the trust was filed “so that we did not have to register, and “[w]e didn’t
12 want to pay the hundred dollars a year,” when the entity was not doing business.

13 On June 2, 2016, Richard Shaw filed for bankruptcy. In his bankruptcy petition, he listed
14 the holders of the mortgages on both the Nevada and Florida properties as his creditors,
15 explaining that he was the beneficiary of a trust created 4/16/2004. Saint Andrews Ivy was
16 created in March 2004, but has no beneficiaries listed. Richard Shaw both said that there are no
17 beneficiaries of Saint Andrews Ivy, and that it “sounds like” he is the beneficiary of the trust.
18 Rose stated that there were never any trust beneficiaries. The 30(b)(6) representative, Vanessa
19 Shaw, said that the role of the trustee was to protect the assets of the trust and “taking care to
20 distribute to the beneficiaries,” but she also stated that there were no beneficiaries of the trust.

21 On June 28, 2017, the U.S. District Court for the Middle District of Florida entered an
22 order, after the defendants’ default, setting aside the transfer of the Florida property to Saint
23 Andrews Ivy as “fraudulent and void,” and finding that “Saint Andrews Ivy is the nominee or
24 alter ego of Richard Shaw, and accordingly, the federal tax liens are properly attached to Richard
25 Shaw’s interest in the Florida Parcel.”

26 On February 29, 2016, the Government filed the present action in the District of Nevada
27 seeking the following relief: (1) a declaration that pursuant to 11 U.S.C. § 523 Richard Shaw’s
28 federal tax liabilities for 1999, 2000, 2003 and 2004 were not discharged in bankruptcy; (2) a

1 judgment against Richard Shaw for the unpaid balance of the assessed amounts pursuant to 26
2 U.S.C. § 7402(a); (3) a finding that the United States' tax liens have priority over Saint Andrews
3 Ivy, B.T., because Saint Andrews was not a bona fide purchase in good faith; (4) a finding that
4 the purported transfer of the Nevada Parcel was a fraudulent conveyance and is voidable
5 pursuant to N.R.S. § 112.180(1)(a)&(b); (5) a finding that the Nevada parcel is held by Saint
6 Andrews as the nominee or alter ego of Richard Shaw to which the federal tax liens attach; and
7 (6) foreclosure of the federal tax liens against the Nevada Parcel.

8 Plaintiff then filed the present motion for summary judgment. Defendant Rose Shaw filed
9 her motion for partial judgment on the pleadings seeking a determination that her interest in the
10 property has not been affected by the allegations of the complaint.

11 **II. SUMMARY JUDGMENT STANDARD**

12 Summary judgment may be granted if the pleadings, depositions, answers to
13 interrogatories, and admissions on file, together with affidavits, if any, show that there is no
14 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
15 matter of law. See Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
16 (1986). The moving party bears the initial burden of showing the absence of a genuine issue of
17 material fact. See *Celotex*, 477 U.S. at 323. The burden then shifts to the nonmoving party to
18 set forth specific facts demonstrating a genuine factual issue for trial. See *Matsushita Elec.*
19 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

20 All justifiable inferences must be viewed in the light most favorable to the nonmoving
21 party. See *Matsushita*, 475 U.S. at 587. However, the nonmoving party may not rest upon the
22 mere allegations or denials of his or her pleadings, but he or she must produce specific facts, by
23 affidavit or other evidentiary materials as provided by Rule 56(e), showing there is a genuine
24 issue for trial. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). The court need
25 only resolve factual issues of controversy in favor of the non-moving party where the facts
26 specifically averred by that party contradict facts specifically averred by the movant. See *Lujan*
27 *v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990); see also *Anheuser-Busch, Inc. v. Natural*
28 *Beverage Distribrs.*, 69 F.3d 337, 345 (9th Cir. 1995) (stating that conclusory or speculative

1 testimony is insufficient to raise a genuine issue of fact to defeat summary judgment). Evidence
2 must be concrete and cannot rely on “mere speculation, conjecture, or fantasy.” O.S.C. Corp. v.
3 Apple Computer, Inc., 792 F.2d 1464, 1467 (9th Cir. 1986). “[U]ncorroborated and self-serving
4 testimony,” without more, will not create a “genuine issue” of material fact precluding summary
5 judgment. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

6 Summary judgment shall be entered “against a party who fails to make a showing
7 sufficient to establish the existence of an element essential to that party’s case, and on which that
8 party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Summary judgment shall
9 not be granted if a reasonable jury could return a verdict for the nonmoving party. See
10 Anderson, 477 U.S. at 248.

11 **III. ANALYSIS**

12 **A. Defendant Richard Shaw’s Tax Liability**

13 In an action to collect taxes, the initial burden falls on the Government. Oliver v. United
14 States, 921 F.2d 916, 919 (9th Cir. 1990). The initial burden is met by introducing into evidence
15 its assessment of taxes due. Id. “Normally, introduction of the assessment establishes a *prima*
16 *facie* case.” Id. Here, the United States has introduced the Form 4340s for the tax years in
17 question. Further, the Government has introduced evidence, the Form 1099 information sent to
18 the IRS by third parties, linking Shaw to the income-producing activity. For the 2004 tax year,
19 the United States introduced a late tax return submitted by the Shaws asserting the amount of
20 taxes assessed by the IRS.

21 The Court finds that the United States has provided *prima facie* evidence of income,
22 shifting the burden to Richard Shaw to show that the assessment is “arbitrary or erroneous[.]”
23 United States v. Stonehill, 702 F.2d 1288, 1294 (9th Cir. 1983). If Shaw successfully rebuts the
24 presumption of correctness, the burden shifts back to the Government to “establish the
25 correctness of the evidence by sufficient and competent evidence.” United States v. Molitor, 337
26 F.2d 917, 923 (9th Cir. 1964).

27 However, the Court finds that Shaw’s reliance on estimates, in his own words
28 “guesstimates” of his potential deductions have not rebutted the presumption of correctness.

1 “[A]n income tax deduction is a matter of legislative grace and . . . the burden of clearly showing
2 the right to the claimed deduction is on the taxpayer.” INDOPCO, Inc. v. Comm’r, 503 U.S. 79,
3 84 (1992). The Internal Revenue Code permits deductions for business expenses. 26 U.S.C. §
4 162(a). That statute has five elements. The “item must (1) be ‘paid or incurred during the taxable
5 year,’ (2) be for ‘carrying on any trade or business,’ (3) be an ‘expense,’ (4) be a ‘necessary’
6 expense, and (5) be an ‘ordinary’ expense.” Comm’r v. Lincoln Sav. & Loan Ass’n, 403 U.S.
7 345, 352 (1971). Shaw failed to show that he met “every condition of . . . [each] deduction” he
8 claimed. Davis v. Comm’r, 394 F.3d 1294, 1298 n.2 (9th Cir. 2005).

9 While taxpayers are allowed to take certain business expenses, the law requires taxpayers
10 to substantiate them. 26 U.S.C. § 274(d). The deduction cannot be allowed unless the
11 substantiation requirement is met, which Shaw failed to do. § 274(d). Specifically, the law
12 requires “adequate records or . . . sufficient evidence corroborating the taxpayer’s own
13 statement” to show the business purpose of the expense. Id; 26 C.F.R. § 1.274-5T(b)(2)(iv). The
14 regulations favor contemporaneous written records, noting that they have “a high degree of
15 credibility not present with respect to a statement prepared subsequent thereto when generally
16 there is a lack of accurate recall.” 26 C.F.R. § 1.274-5T(c)(1); see also Reynolds v. Comm’r, 296
17 F.3d 607, 615-16 (7th Cir. 2002) (explaining that taxpayers without “[c]omplete,
18 contemporaneous records . . . will have to present evidence that is equally credible and probative,
19 which will be difficult”).

20 While crediting non-movant Defendants’ testimony that some records had been destroyed
21 in 2004, Defendants rely solely on their own self-serving testimony regarding potential
22 deductions and not on credible, probative contemporaneous records to corroborate their
23 deductions. “If evidence to establish a deduction is lacking, the taxpayer, not the government,
24 suffers the consequence.” Talley Industries Inc. v. Comm’r, 116 F.3d 382, 387-88 (9th Cir.
25 1997). Therefore, the Court grants Plaintiff’s motion for summary judgment and holds that
26 Defendants are liable for taxes assessed for the years in question.

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1 **B. Penalties & Interest**

2 Additionally, the United States is entitled to penalties and interest on Shaw's tax
3 liabilities. Federal law imposes a penalty on taxpayers who understate their tax if one or more of
4 several criteria are met. See 26 U.S.C. § 6662(a), (b). This penalty, known generically as an
5 "accuracy-related penalty," is equal to 20% of the amount of the underpayment. Id. § 6662(a).
6 An accuracy-related penalty applies when a taxpayer's underpayment results from a "substantial
7 understatement of income tax." 26 U.S.C. § 6662(b)(2). An "understatement" is the amount of
8 tax required to be shown on the return less the amount shown. Id. § 6662(d)(2)(A). It is
9 "substantial" if it exceeds the greater of 10% of the tax required to be shown on the return or
10 \$5,000. Id. § 6662(d)(1)(A); see also 26 C.F.R. § 1.6662-4. The Government has met its burden
11 of production under § 7491(c) by establishing that there was a deficiency in tax that exceeded the
12 statutory threshold. See, e.g., Brennan v. Comm'r, T.C. Memo 2012-209, 2012 WL 3000336
13 (Tax Court 2012). Specifically, for the year 2000, accounting for abatements, the assessed
14 amount was \$50,436.00. However, Shaw understated his tax by submitting a return that showed
15 zeroes where income should have been reported.

16 Also, Shaw is liable for estimated tax penalties for the years 1999, 2000, 2003 and 2004.
17 Each year, taxpayers are generally required to remit four estimated income tax payments
18 (requirements usually satisfied by wage withholdings). See 26 U.S.C. § 6654(c), (d). The
19 payment must be at least the lesser of (1) 90% of the tax due for the year or (2) 100% of the tax
20 due for the previous year. § 6654(d). Federal law imposes a penalty when the payments are not
21 made. § 6654(a). The penalty is mandatory unless the taxpayer shows that an exception applies.
22 E.g., Harris v. Comm'r, 104 T.C.M. (CCH) 554 (2012). The United States has satisfied its
23 burden of showing underpayment of their estimated tax, through the certified records of the
24 assessments. Therefore, Shaw is liable for the estimated tax penalties for the specified years.

25 Next, federal law imposes a monthly penalty of 0.5% of any tax shown on a return, but
26 not paid. 26 U.S.C. § 6651(a)(3). It imposes the same penalty if a tax required to be shown on a
27 return is not paid following notice and demand. Id. § 6651(a)(3). The penalties cannot exceed
28

1 25% of the total tax due. See id. § 6651(a)(2), (3).² The United States met its burden of
2 production by showing that tax was shown on a return, or was required to be shown, but was not
3 paid following its demand. See, e.g., Wheeler v. Comm'r, 127 T.C. 200, 208-10 (2006). Here,
4 Shaw did not promptly pay the taxes owed for the 1999, 2000, 2003, and 2004 tax years on
5 demand of the government, despite owing those taxes. Therefore, Shaw is liable for the failure-
6 to-pay penalties assessed for those years.

7 In addition to the failure-to-pay penalties, federal law imposes a monthly penalty of 5%
8 on the amount of owed, where the taxpayer fails to timely file a return. 26 U.S.C. § 6651(a)(1).
9 The penalty cannot exceed 25% of the total tax due. § 6651(a)(1). The United States has met its
10 burden of production by showing that the taxpayer failed to file tax returns on time. See, e.g.,
11 Higbee v. Comm'r, 116 T.C. 438, 447 (Tax Court 2001). Here, the Form 4340s are presumptive
12 proof that Mr. Shaw did not file his returns for 1999, 2000, 2003, and 2004 within six months of
13 them being due. Therefore, Mr. Shaw is liable for the late return filing penalties for the specified
14 years.

15 Finally, under 26 U.S.C. § 6702, “[a] person shall pay a penalty of \$5,000” if they file
16 “what purports to be a return of a tax imposed by this title but” either “does not contain
17 information on which the substantial correctness of the self-assessment may be judged,” or
18 “contains information that on its face indicates that the self-assessment is substantially
19 incorrect.” 26 U.S.C. § 6702(a)(1). In addition, the position taken must be one “which the
20 secretary has identified as frivolous” or “reflects a desire to delay or impede the administration
21 of federal tax laws.” 26 U.S.C. § 6702(a)(2). Courts have “repeatedly characterized returns
22 reflecting zero income and zero tax as frivolous.” Grunstead v. Comm'r, 136 T.C. 455, 460 (Tax
23 Court 2011).

24 Thus, tax returns with zeros in the income section where income actually existed are
25 “substantially incorrect and frivolous, thus making [taxpayers] liable for the frivolous return
26 penalty.” Lemieux v. United States, 230 F.Supp.2d 1143, 1146 (D. Nev. 2002). Here, the United
27

28 ² A so-called “substitute for return” prepared by the IRS under 26 U.S.C. § 6020(b) counts as a “return” under § 6651(a)(2) and (a)(3), and not under (a)(1). 26 U.S.C. § 6651(g).

1 States has assessed the frivolous return penalties for the years at issue, for returns submitted to
2 the IRS in 2008 (but for the 2002 and 2003 tax years). Those returns show zeroes listed as
3 income; with those returns were submitted “corrected” Form 1099s that Mr. Shaw admitted he
4 had modified in order to show zeroes on the amount he purportedly received from each entity.
5 Mr. Shaw has since submitted returns that he contends are more accurate, that do reflect him
6 having received income. Mr. and Mrs. Shaw stated that the reason they submitted the “zero”
7 returns were because of positions taken in a book called Cracking the Code, positions that
8 numerous courts have found to be frivolous. See, e.g., Waltner v. Comm'r, T.C. Memo. 2014–
9 35, 2014 WL 775179 (Tax Court 2014) (imposing sanctions on litigant for making frivolous
10 arguments where litigant “appear[ed] to be perpetuating frivolous positions that have been
11 promoted and encouraged by Peter Hendrickson’s book Cracking the Code.); United States v.
12 Hendrickson, 664 F.Supp.2d 793 (E.D. Mich. 2009) (denying the motions to dismiss the
13 indictment of defendant (author of Cracking the Code)). Therefore, Shaw is liable for the
14 assessed frivolous return penalty.

15 **C. The Nevada Property**

16 **1. Saint Andrews Ivy Holds Nevada Property as Nominee of Shaw**

17 A tax lien arising out of unpaid taxes attaches to all property (or rights to
18 property) held by a taxpayer, “including property that is held by a third party as the taxpayer’s
19 nominee or alter ego.” Fourth Inv., L.P. v. United States, 720 F.3d 1058, 1066 (9th Cir. 2013).
20 The nominee inquiry is a state-law inquiry, id. at 1068, and here, the Court looks to the Nevada
21 nominee doctrine to see whether Saint Andrews Ivy holds title to the Nevada property as
22 nominee of Richard Shaw.

23 In Nevada, courts weigh at least seven factors in determining whether a nominee
24 situation exists:

25 (1) the source of the funds used to purchase the property; (2) the
26 taxpayer’s continued use of the property without the payment of a
27 fair rental value; (3) the taxpayer’s continued payment of
28 maintenance charges and real estate taxes; (4) the nominees’
acquisition of the property without any consideration, or for
inadequate consideration; (5) the taxpayer’s acts of holding himself
out as the owner of the property; (6) the transfer of the property in
anticipation of suit or the incurrence of liabilities by the taxpayer;

1 and (7) the relationship between the taxpayers and the nominee, that
2 is, whether it is a close one, such as by blood or marriage.

3 Nelson v. United States, 1990 WL 169245, at *3 (D. Nev. Sept. 27, 1990), *aff'd in part and*
4 *remanded*, 942 F.2d 792 (9th Cir. 1991); *see also Runvee, Inc. v. United States*, 2013 WL
5 1249602 at *16 (D. Nev. Mar. 26, 2013) (where the “sale” of the property to the alleged nominee
6 was nothing more than a fiction, the purchaser was the nominee of the taxpayers and was holding
7 the property on their behalf).

8 Here, the Court finds that the factors weigh strongly in favor of finding nominee
9 status, the only one that does not (the fifth), does not outweigh the others. **First**, Richard Shaw
10 used his own money to purchase the property—payments on the mortgage, for instance, are
11 currently being made out of his inheritance, and the later transfer of the property to Saint
12 Andrews Ivy was for no money at all. While Richard (and Rose) did purportedly receive “TCUs”
13 from the trust in exchange for all the property, they returned all their “TCUs” to Saint Andrews
14 Ivy without receiving any money in return. **Second**, after the transfer, Richard Shaw had the
15 continued use of the property without paying any rent. **Third**, the maintenance of the property is
16 paid out of an account in the name of Cannen, LLC, for which Richard Shaw and Rose Shaw are
17 the only signatories, and which holds funds from Richard Shaw’s inheritance, meaning that
18 Richard Shaw pays for the maintenance of the property. **Fourth**, Saint Andrews Ivy obtained the
19 property for no consideration whatsoever: not only did it not pay any money to the Shaws for the
20 property, but the Shaws transferred the “TCUs” they allegedly received in exchange for the
21 property back to Saint Andrews Ivy for no money. **Fifth**, the United States admits that, apart
22 from Richard Shaw performing all maintenance and Richard and Rose paying all maintenance
23 fees for the property, it does not have significant evidence of Richard Shaw holding himself out
24 as the owner of the property. **Sixth**, the property was transferred after Mr. Shaw accrued
25 significant tax liabilities, and it appears that it was transferred because of the liabilities Richard
26 Shaw had incurred. Moreover, Richard Shaw explicitly said that the properties were transferred
27 to Saint Andrews Ivy “so the kids would be able to use these properties forever if Rose and I left
28 the world, and they would have use without inheritance taxes and all that, and Vanessa Shaw

1 explained that the role of the Saint Andrews Ivy trustee was “to protect the trust from any third
2 party or governmental agencies.” Those statements show that the property was transferred in
3 anticipation of liabilities. **Seventh**, all trustees and officers of Saint Andrews Ivy are Richard and
4 Rose Shaw, or their children, so there is a close relationship between the taxpayers and the
5 nominee.

6 Finally, Defendant Richard Shaw filed no opposition to Plaintiff’s motion on this
7 issue. Therefore, in accordance with the cited factors and Shaw’s lack of opposition, the Court
8 finds that Saint Andrews Ivy holds the Nevada property as Richard Shaw’s nominee.

9 **2. Alternatively, Saint Andrews Ivy Is Richard Shaw’s Alter Ego**

10 There is no true, uniform standard “for determining whether a corporation is
11 simply the alter ego of its owners,” Valley Finance, Inc. v. United States, 629 F.2d 162, 172
12 (D.C. Cir. 1980). Instead, “[t]he test is a practical one, based largely on a reading of the
13 particular factual circumstances.” Id. The Supreme Court has counseled that whether federal
14 common law or state law governs depends upon (i) the “need for a nationally uniform body of
15 law”; (ii) “whether application of state law would frustrate specific objectives of... federal
16 programs,” in which case the courts “must fashion special rules solicitous of those federal
17 interests”; and (iii) “the extent to which application of a federal rule would disrupt commercial
18 relationships predicated on state law.” United States v. Kimbell Foods, 440 U.S. 715, 728-729
19 (1979).

20 The need for national uniformity and the need to further the Internal Revenue
21 Code’s objectives counsel in favor of a federal standard. See Whether Fed. Common Law or
22 State Law Governs Alter Ego Status, IRS CCN CC-2012-002, 2011 WL 6257204 (Dec. 2, 2011).
23 Meanwhile, given the similarities between the federal and Nevada standard, the use of the federal
24 standard should not disrupt commercial relationships. Compare N.L.R.B. v. Greater Kansas City
25 Roofing, 2 F.3d 1047, 1052 (10th Cir. 1993) (federal alter-ego standard) with Mallard Auto.
26 Grp., Ltd. v. LeClair Mgmt. Corp., 153 F.Supp. 2d 1211, 1214 (D. Nev. 2001) (setting forth state
27 law standard). The alter-ego inquiry goes not to the ownership of property (a question of state
28 law), but rather to the question of who is liable for a tax. Liability for federal taxes is governed

1 by the Internal Revenue Code. In the Ninth Circuit, the federal common law standard has three
2 prongs: first, “the amount of respect given to the separate identity of the corporation by its
3 shareholders;” second, “the degree of injustice visited on the litigants by recognition of the
4 corporate entity;” and third, “the fraudulent intent of the incorporators.” Seymour v. Hull &
5 Moreland Eng’ng, 605 F.2d 1105, 1111 (9th Cir. 1979). Here, Richard Shaw showed no respect
6 for the “separate identity” of the corporation: Saint Andrews Ivy did not pay for the property, or
7 the property’s expenses and instead, an account in the name of Cannen, LLC held Richard
8 Shaw’s money, which was used both for the Shaws’ personal expenses and to maintain the
9 property. Moreover, the property of Saint Andrews Ivy was used by Richard Shaw free of
10 charge. Finally, Saint Andrews Ivy did not observe corporate formalities: there were no quarterly
11 reports, Saint Andrews Ivy did not keep regular corporate records, did not file tax returns even
12 when it had income, and did not even have a bank account. Second, crediting the corporate form
13 would cause injustice to the United States, given that Richard Shaw impoverished himself by
14 transferring all his property to Saint Andrews Ivy, even as he was accruing significant tax
15 liabilities.

16 Finally, there was a fraudulent intent: the transfer to Saint Andrews Ivy occurred
17 just as Richard Shaw was accruing significant tax liabilities, and Richard Shaw outright stated
18 that part of the reason for the transfer was to make sure his children have the “use [of the
19 property] without inheritance taxes and all that.”

20 But even if Nevada state law applies in considering the nominee theory (and
21 federal common law does not), the Court would find that Saint Andrews Ivy is Richard Shaw’s
22 nominee. The Nevada alter ego standard has three factors:

23 (1) the corporation . . . was influenced and governed by the person
24 asserted to be the alter ego . . . ; (2) there must be such unity of
25 interest and ownership that one is inseparable from the another; and
26 (3) the facts must be such that adherence to the corporate fiction of
a separate entity would, under the circumstances, sanction fraud, or
promote injustice.

27 Mallard Auto. Grp., 153 F.Supp.2d at 1214. The second of those three factors, regarding unity of
28 interest and ownership between the alter ego and the corporation, itself has five subparts: “(1)

1 commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment
2 of corporate assets as individual's own; and (5) failure to observe corporate formalities.” Id.

3 First, the corporation was influenced and governed by Richard Shaw, its
4 managing director. While Saint Andrews Ivy was purportedly a “business trust,” it admittedly
5 never conducted any business. Instead, all it did was hold the property transferred to it at
6 inception. Richard Shaw maintained the property. Richard Shaw admitted to governing and
7 controlling Saint Andrews Ivy, at least implicitly: when asked why the “certificate of
8 cancellation” was filed on behalf of Saint Andrews Ivy, he stated that it was filed “so that we did
9 not have to register, and “[w]e didn’t want to pay the hundred dollars a year,” when the entity
10 wasn’t doing business.

11 **Second**, there is a unity of interest and ownership between Saint Andrews Ivy and
12 Richard Shaw. To the extent Saint Andrews Ivy had any funds, those funds were commingled: a
13 bank account in the name of Cannen, LLC held Richard Shaw’s money, which was used both for
14 the Shaws’ personal expenses, and to maintain the property. There was undercapitalization: no
15 money was transferred to Saint Andrews Ivy and there were no funds available to pay for the
16 property’s purchase or maintenance. There was no unauthorized diversion of funds only because
17 Saint Andrews Ivy did not have any funds. Richard Shaw treated Saint Andrews Ivy’s assets as
18 his own: he lived there rent free, he used all the furniture and other assets held by Saint Andrews
19 Ivy as his own and it was his money (his inheritance) used to pay the expenses of the property.
20 There was a failure to observe corporate formalities: Saint Andrews Ivy did not keep regular
21 books or records, had no bank account, kept no quarterly reports, and filed no tax returns even
22 though there was apparently some small amount of rental income.

23 According to the trust documents themselves and the testimony of the Shaws and
24 the 30(b)(6) representative, the holder of the TCUs would receive proportionate distributions of
25 the trust property when the trust was dissolved but Richard and Rose transferred the TCUs back
26 to the trust itself. Indeed, Richard and Rose Shaw, and Vanessa Shaw, the 30(b)(6)
27 representative, could not even state outright that Saint Andrews Ivy had beneficiaries.

28

1 **Third**, if the formation of the entity made Richard Shaw otherwise judgment-
2 proof (as he had no remaining assets after Saint Andrews Ivy's formation), then crediting the
3 corporate form would sanction fraud or create injustice. See Mallard Auto Grp., 154 F.Supp.2d
4 at 1216. Here, Richard Shaw impoverished himself by transferring all his assets to Saint
5 Andrews Ivy, meaning that the United States would be unable to collect if the corporate form is
6 not pierced, which would sanction a fraud or injustice.

7 **3. Alternatively, the Transfer of the Nevada Property to Saint Andrews Ivy,**

8 **B.T. Was A Fraudulent Transfer**

9 In the alternative, the Court finds that the purported transfer of the Nevada
10 property to Saint Andrews Ivy was a fraudulent transfer. In Nevada, there are two ways a
11 fraudulent transfer can be proved, either of which is satisfied here. There can be a constructive
12 fraudulent transfer, N.R.S. § 112.180(1)(b), or a fraudulent transfer made "with actual intent" to
13 delay, hinder, or defraud a creditor. N.R.S. § 112.180(1)(a).

14 First, there is a constructive fraudulent transfer where, "[w]ithout receiving a
15 reasonably equivalent value in exchange for the transfer," the debtor "[i]ntended to incur, or
16 believed or reasonably should have believed that the debtor would incur, debts beyond his or her
17 ability to pay as they became due." N.R.S. § 112.180(1)(b)(1). Here, Richard Shaw did not
18 receive a reasonably equivalent value of the Nevada property from the transfer (as he received no
19 money whatsoever), and he knew he was accruing significant tax liabilities that he would not be
20 able to pay because he impoverished himself by giving all his property to the trust.

21 Second, there was actual intent, as can be seen by reference to the statutory
22 eleven-part test set forth in N.R.S. § 112.180(2). The transfer was to an insider, § 112.180(2)(a),
23 as Saint Andrews Ivy is governed and controlled exclusively by Richard Shaw and his family.
24 Richard Shaw retained possession or control of the property after the transfer, § 112.180(2)(b),
25 as he still lives there and provides the funds for its maintenance. Before the transfer was made,
26 Richard Shaw knew there was a strong possibility of suit, § 112.180(2)(d), given that he had
27 already incurred significant tax liabilities. The transfer was of substantially all Richard Shaw's
28 assets, § 112.180(2)(e), as he agreed he owned very little after the transfer. The value of the

1 consideration received by Richard Shaw in exchange for the property, § 112.180(2)(h), was
2 much less than the property was worth, as he received no money, and the TCUs he received he
3 returned to the trust itself. After the transfer, Richard Shaw effectively became insolvent, as he
4 had no remaining assets, but continues to owe money on mortgages, as seen by his bankruptcy
5 petition. The transfer to Saint Andrews Ivy occurred shortly after, and shortly before, Richard
6 Shaw incurred significant tax liabilities. There are other factors that do not necessarily weigh in
7 favor of the United States, such as: whether the transfer was concealed, § 112.180(2)(c), whether
8 the debtor absconded, § 112.180(2)(f), whether the debtor removed or concealed assets, §
9 112.180(2)(g), and whether the debtor transferred the essential assets of the business to a lienor
10 who transferred the assets to an insider of the debtor. § 112.180(2)(k). However, those factors do
11 not outweigh the other factors in determining whether the transfer was fraudulent.

12 Finally, Richard Shaw stated that the purpose of the trust was partly to avoid
13 inheritance taxes, and Vanessa Shaw said that the role of the trust's trustees was to "protect the
14 trust from any third party or governmental agencies. The Court should find that the transfer of
15 the property to Saint Andrews Ivy was a fraudulent transfer.

16 **D. Foreclosure and Defendant Rose's Motion for Judgment on the Pleadings**

17 Further, Defendant Shaw has not directly opposed summary judgment on the
18 Government's motion to foreclose on the Nevada Property in order to collect the tax liabilities.
19 Given that Richard Shaw is the true owner of the property at issue, a foreclosure is the proper
20 remedy here. 26 U.S.C. § 7403. Once it is established that the United States has liens upon
21 certain property, the United States may foreclose the liens, sell the property, and apply the
22 proceeds toward the taxes at issue. See United States v. Craft, 535 U.S. 274 (2002); United
23 States v. Rodgers, 461 U.S. 677, 693-94 (1983). Under Rodgers, district courts have limited
24 discretion to not order a foreclosure sale under 26 U.S.C. § 7403. Defendants have the burden of
25 proof as to whether a court should use its limited discretion to not issue a foreclosure order.
26 Rodgers, 461 U.S. at 706; United States v. Padilla, 92004 WL 2827891, at *1 (E.D. Cal. 2004).

27 Defendant Rose opposes foreclosure and asserts, contrary to her deposition testimony,
28 that she maintains an interest in the Nevada Property. However, the Court has already found,

1 consistent with Rose Shaw's testimony, that Saint Andrews Ivy holds the property as nominee
2 for Richard Shaw, alternatively that Saint Andrews Ivy is the alter ego of Richard Shaw and
3 finally that the transfer qualifies as a fraudulent conveyance under Nevada law. Under any of
4 these theories, even if some interest were to revert to Rose Shaw (which the Court holds that it
5 does not), the tax lien would attach to Rose's share and foreclosure would still be the appropriate
6 remedy.

7 In Nevada, under NRS § 123.220, any "property acquired after marriage 'through the toil
8 or talent or other productivity faculty of either spouse' is community property." Randono v.
9 Turk, 466 P.2d 218, 223-24 (Nev. 1970). The presumption that property acquired after marriage
10 is community property "can only be overcome by clear and convincing evidence." Peters v.
11 Peters, 557 P.2d 713, 715 (Nev. 1976). Community property is subject to community debts. See
12 Nelson v. United States, 53 F.3d 339 at*1, 1995 WL 257884 *1 (9th Cir. 1995) (unpublished)
13 ("The [Nevada] district court was also correct in holding that the entire proceeds from the sale of
14 the [community] property could be used to pay [husband taxpayer's] tax liability.").

15 Here, when the Shaws transferred their interests to Saint Andrews Ivy, the joint tenancy
16 was converted into a tenancy in common. See Smolen for Smolen v. Smolen, 956 P.2d 128, 130
17 (Nev. 1998) (joint tenancy severed when interest in residence conveyed to trust). A tenancy in
18 common is community property under § 123.220 provided it was obtained during the marriage.
19 See Peters, 557 P.2d at 715 ("Property held [as tenants in common] can be compatible with the
20 concept of community property."). Accordingly, Defendant Rose's motion for judgment on the
21 pleadings is denied. The United States may foreclose on the Nevada Property to satisfy Richard
22 Shaw's outstanding tax liabilities.

23 **IV. Conclusion**

24 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment
25 (#65) is **GRANTED**;

26 IT IS FURTHER ORDERED that the United States shall file a motion or motions for sale
27 and distribution and final entry of judgment with a proposed order no later than thirty (30) days
28 after the entry of this order;

IT IS FURTHER ORDERED that Saint Andrews Ivy owns the Nevada property as Richard Shaw's nominee or alter ego;

IT IS FURTHER ORDERED that the Court finds that the transfer of the property to Saint Andrews Ivy was fraudulent;

IT IS FURTHER ORDERED that Defendant Rose Shaw's Motion for Partial Judgment on the Pleadings (#68) is **DENIED**.

Dated this 28th day of September, 2018.


The Honorable Kent J. Dawson